91-1189

Supreme Court, U.S.
FILED
JAN 14 1992
OFFICE OF THE CLERK

NO._____

IN THE

Supreme Court of the United States

OCTOBER TERM 1991

Spencer R. Evans, Individually and as Guardian of Margaret E. Evans, Ward and Spouse,

Petitioner,

vs.

Northwest Airlines, Inc., a Minnesota corporation; and, Northwest Airlines Benefit Plan(s), an employee benefit plan(s),

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

James Malcolm Williams
The Carriage House
212 West Franklin Avenue
Minneapolis, MN 55404
(612) 871-8885

Counsel for Petitioner

QUESTIONS PRESENTED

1. Did the Minnesota Court of Appeals and the Minnesota Supreme Court usurp the powers and functions of the United States Congress and the United States Supreme Court by deciding a major federal question involving an alleged conflict between the **EMPLOYEE RETIREMENT INCOME SECURITY ACT of 1974** ,hereinafter referred to as **ERISA**, (**29 U.S.C.A., §1001 et seq**; see esp., **§1001, §1132** and **§1144 (d)**) and the **1926 RAILROAD LABOR ACT**, (**55 Stat. 577**, esp. **§153 (1) as amended, 1934**), hereinafter referred as **RLA**, in such a way as to deprive hundreds of thousands of airline and railroad employees of their rights to have their medical and retirement employee benefits protected by **ERISA**?

or, stated another way:

2. Did the Congress of the United States intend, when it enacted **ERISA**, to deprive employees who worked for employers covered by **RLA**, of the equal protection of **ERISA** by depriving them of the procedural and substantive remedial benefits contained in **ERISA** by adding **Section 1144 (d)** providing that **ERISA**

does not ". . . alter, amend, modify, invalidate, impair, or supersede any law of the United States. . ." (where the **real** issue is the meaning of an **ERISA** medical/dental "**plan**", not the meaning of an **RLA** employer collective bargaining agreement)?

or, stated another way:

3. Does the election by an **RLA** employer to:

a. set up a medical and/or pension benefit plan under **ERISA**;

b. hire an independent insurance company to administer that plan; and,

c. publish in an employee benefit booklet notice to employees that have a claim "denied or ignored" that they have the right to bring remedial court action in either state or federal courts as provided in **ERISA**,

give the denied employee the procedural and substantive remedial rights and safeguards provided in **ERISA** (where the **real** issue is the meaning of an **ERISA** medical/dental "**plan**", not the meaning of an **RLA** employer collective bargaining agreement)?

The Minnesota State Courts of last

resort have decided these major federal questions in such a way as to deprive thousands of airline and railroad employees of the procedural and substantive remedial protections of their employment rights secured by **ERISA**, specifically, invalidating the Petitioner's rights as an airline employee, as provided in **ERISA**, to bring an action in state or federal court and to collect attorneys fees and expenses, thereby depriving the Petitioner and all airline and railroad employees of their federal constitutional rights to equal protection of the law (**ERISA**).

TABLE OF CONTENTS

	Page
Questions Presented	i-iii
Other Court Opinions	1
Jurisdiction	2
Federal Statutes Involved	4
Statement of The Case	6
Argument	10
Appendix/Addendum:	
Order and Memorandum, Hennepin County District Court, Fourth Judicial District, State of Minnesota, Nov. 28, 1990 . . .	A-2
Judgment/Judgment Roll, Hennepin County District Court, Fourth Judicial District, State of Minnesota, ...	A-7
Unpublished Opinion, State of Minnesota, Court of Appeals, Filed August 20, 1991	A-9
Petition for Review of Decision of Court of Appeals, State of Minnesota, In Supreme Court, September 18, 1991	A-15
Order (denying further review), State of Minnesota, In Supreme Court, Oct. 16, 1991	A-24

TABLE OF AUTHORITIES

	Page
Federal Cases:	
Delta Airlines, Inc. v. Kramarsky, 650 Fed. 2d 1287, 1296 - 1302, 485 Fed. Supp. 300 (CA 2, 1980)	10
Delta Airlines, Inc. v. Kramarsky, 666 Fed. 2d 21, 26, n. 2 (CA 2, 1981)	10
Shaw v. Delta Airlines, Inc., 1983, 463 U.S. 85, 77 Law Ed. 490, 498, ftnt. 8, 103 Sup. Ct. 2890	10
Federal Statutes:	
28 United States Code §1257 (a)	3
29 U.S.C.A. §1132	5
29 U.S.C.A. §1144 (d)	6
55 Stat. 577, §153 (1) as amended 1934, 1926 Railroad Labor Act (RLA)	i
Rules:	
Supreme Court Rule 10. 1. (b) and (c).	3
Supreme Court Rule 13. 1. . .	4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

NO._____

Spencer R. Evans, Individually and as Guardian of Margaret E. Evans, Ward and Spouse,

Petitioner,

vs.

Northwest Airlines, Inc., a Minnesota corporation; and, Northwest Airlines Benefit Plan(s), an employee benefit plan(s),

Respondents.

PETITION FOR WRIT OF CERTIORARI

Comes now the Petitioner who respectfully shows the Court pursuant to Rule 14 of the Supreme Court of the United States:

OTHER COURT OPINIONS

1. An unpublished Order and Memorandum of the Fourth Judicial District Court of Hennepin County, State of Minnesota, DC File No. CT88-11459, Spencer (**sic**) Evans, individually and as Guardian of

Margaret E. Evans, Ward and Spouse, Plaintiff v. Northwest Airlines, Inc., a Minnesota corporation, and Northwest Airlines Benefit Plan(s), an Employee Benefit Plan(s), Defendants, dated November 28, 1990, dismissing the case for lack of subject matter jurisdiction because **ERISA** is preempted by **RLA** (set out **hoc verba** in Appendix **infra**);

2. An Unpublished Opinion (unreported) by the Minnesota Court of Appeals affirming trial court's dismissal, Docket No. C6-91-404, dated August 20, 1991, (WL 156642, Minn. App. 1991), (set out **hoc verba** in Appendix **infra**; and,

3. An unpublished Order of the Minnesota Supreme Court denying petition for the review of decision of Court of Appeals and the trial court's decision upon which it is based, Docket No. C6-91-404, dated October 16, 1991 (set out **hoc verba** in Appendix **infra**.

JURISDICTION

This Petition for Writ of Certiorari is to request that this Court review the decisions on federal questions, specifically, the final Order of the Minnesota Supreme Court denying review of the

Unpublished Opinion of the Minnesota Court of Appeals. That Order is dated and filed on October 16, 1991.

Jurisdiction to review this case on writ of certiorari is based on **28 United States Code §1257 (a)** and on **Supreme Court Rule 10. 1. (b)** and **(c)** because

(1) the validity of Statutes of the United States are drawn in question as being repugnant to the Constitution; and/or

(2) the validity of Statutes of the United States are drawn in question as being repugnant to other laws of the United States; and

(3) a state court of last resort has decided a federal question in a way that apparently conflicts with decisions of United States Courts of Appeals; and,

(4) when a state court has decided an important question of federal law which has not been, but should be, settled by this court; and

(5) said state court of last resort has apparently decided this federal question in a way that conflicts with the clear implications of a decision of this Court.

These matters are delineated in **QUESTIONS PRESENTED, supra.**

Jurisdiction is also asserted under **Supreme Court Rule 13. 1.** which allows 90 days after the entry of judgment (Order, dated and filed October 16, 1991) of the state court of last resort, cited **supra** and set out **hoc verba** in the Appendix **infra,** to file a Petition for Writ of Certiorari.

FEDERAL STATUTES INVOLVED

1. **ERISA, supra.** Pertinent portions are as follows:

> ". . . **§ 1001. Congressional findings and declaration of policy.**
> . . . The Congress finds . . . that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries . . . that disclosures be made and safeguards be provided with respect to the establishment, operation and administration of such plans; that they substantially affect the revenues of the United States **BECAUSE THEY ARE AFFORDED PREFERENTIAL FEDERAL TAX TREATMENT**; that . . . employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable,

in the interests of employees and their beneficiaries, for the protection of the revenue of the United States . . . that minimum standards be provided assuring the equitable charac ter of such plans and their financial soundness. . . . It is hereby declared to be the policy of this chapter to protect . . . the interests of participants in employee benefit plans and their beneficiaries . . . by establishing standards of conduct, responsibility and obligation for fiduciaries of employee benefit plans, **AND BY PROVIDING FOR APPROPRIATE REMEDIES, SANCTIONS, AND READY ACCESS TO THE FEDERAL COURTS**. . . .

"§1132. **Civil enforcement.**

Persons empowered to bring civil action

(a) A civil action may be brought --

(1) by a participant or beneficiary -- . . .

(B) **TO RECOVER BENEFITS DUE TO HIM UNDER THE TERMS OF HIS PLAN, TO ENFORCE HIS RIGHTS UNDER THE TERMS OF THE PLAN, OR TO CLARIFY HIS RIGHTS TO FUTURE BENEFITS UNDER THE TERMS OF THE PLAN;** . . .

Jurisdiction

(e) (1) . . . **State courts of competent jurisdiction and district courts of the United States**

shall have concurrent jurisdiction of actions under subsection (a) (1) (b) of this section.

. . .

Attorney's fees and costs

(g) In any action under this subchapter by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party

. . .

§ 1144. Other laws.

. . .

Alteration, amendment, modification, invalidation, impairment,or supersedure of any law of the United States prohibited

(d) Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . or any rule or regulation issued under any such law . . ."

(Emphasis, ours.)

STATEMENT OF THE CASE

The Petitioner is a veteran cabin attendant who has flown for Northwest Airlines for over 40 years. Approximately 10 years ago, his wife became seriously ill with paranoid schizophrenia

requiring prolonged hospitalization and continuous care and supervision. The Respondents refused to pay some $50,000 in hospitalization and medical expenses.

The action was originally commenced by the Petitioner in the District Court of the State of Minnesota pursuant to published instructions from his employer and those administering the benefit plan (Respondents herein), and pursuant to the instructions of his union.

Waiting nearly 3 years after commencement of this action and shortly after the Minnesota District Court Arbitor awarded over $63,000 to the Petitioner, Respondents decided to contend that the **RLA** preempted **ERISA**. By that time, of course, Petitioner's grievance rights had perished through the time limitations in the collective bargaining agreement.

The state trial court, the Court of Appeals and the Supreme Court, all of Minnesota, interpreted federal congressional intent so as to deprive the Petitioner and hundreds of thousands of other airline employees of the protection afforded by **ERISA** dismissing the case by deciding that the **RLA** preempted **ERISA** and deprived the state court of jurisdiction.

This entire case, from the initial filing of the summons and complaint, involved the protection afforded the Petitioner and his wife under **ERISA** and his right to recover benefits in state court proceedings. Although the complaint was filed on October 14, 1987, the contention that **ERISA** was preempted by the **RLA** depriving the state court of subject matter jurisdiction was not raised in the answer filed by the respondents. It was not involved in the case until July 17, 1990, and was then the sole issue being litigated. As indicated above, it appears to be a reaction to the district court arbitration award of over $63,000 on April 16, 1990.

The following is the history of this case:

State court action:

1. Summons and complaint, October 14, 1987, found at Page 1, Appellant's Brief Appendix.

2. Answer, June 14, 1988, found at Page 5, **Ibid**.

3. Defendants' motion for dismissal under **RLA**, July 17, 1990, found at Page 10, **Ibid**.

4. Plaintiffs' Memorandum of Law in

Opposition to Defendants' Motion, August 20, 1990, found at Page 12 **Ibid**.

5. Order and Memorandum dismissing complaint, November 28, 1990, found at Pp. 36-41 **Ibid** and Addendum, **infra**.

6. Judgment, December 10, 1990, found at P. 42 Appellant's Brief and Addendum **infra**.

Minnesota Court of Appeals:

7. Plaintiffs appeal of trial court order, found at Pp. 1-17 of Appellant's Brief, April 4, 1991.

8. Unpublished Opinion, filed August 20, 1991, found at Addendum **infra**.

Minnesota Supreme Court:

9. Petition for Review, dated September 18, 1991, Pp. 1-5, Addendum **infra**.

10. Order denying review, October 16, 1991, Addendum, **infra**.

As stated above, the federal issues were raised before the trial court beginning on July 17, 1990 and consistently thereafter at all stages to and including the filing of this Petition.

ARGUMENT

The actions of the state courts below (1) put **ERISA** in direct conflict with the **RLA**; (2) has **RLA** preempt **ERISA**; (3) deprives hundreds of thousands of airline and railroad employees of the equal protection of **ERISA**; (4) appear to be contrary to Circuit Courts of Appeals' decisions in (a) **Delta Airlines, Inc., v. Kramarsky, 666 Fed. 2d 21, 26, n.2 (CA 2, 1981); (b) Delta Airlines, Inc. v. Kramarsky, 650 Fed. 2d 1287, 1296-1302, 485 Fed. Supp. 300 (CA 2, 1980);** and this Court's opinion in **Shaw v. Delta Airlines, Inc., 1983, 463 U.S. 85, 77 Law Ed. 490, 498, ftnt. 8, 103 Sup. Ct. 2890;** and, (5) if these cases do not contravene the Minnesota Appellate Courts' decisions, this most important matter of federal law should be settled by this Court's interpretation of the congressional intent in **ERISA** vis-a-vis, **RLA** not state appellate courts.

When, as in this case, a state court of last resort has decided a major federal question depriving many employees of their procedural and substantive protections under **ERISA**, certiorari should be granted.

It is clear to your Petitioner that **ERISA**, by standard rules of legislative intent, must be interpreted in a way that is constitutional and reasonable.

Therefore, once an airline or other **RLA** employer chooses to set up a group benefit plan for its employees under the aegis of **ERISA** to garner the obvious tax advantages, the rights and remedies of the employees of that employer are defined by **ERISA** and not by the **RLA**.

A union who merely participated incidentally in the collective bargaining that preceded the setting up of the plan under **ERISA** certainly did not understand, as the Minnesota Courts unreasonably imply, that it was agreeing to be, in effect, an insurance company providing services on each rejected claim through the unwieldy prolonged and costly grievance procedures under the **RLA** wherein **only** the employer has the ultimate right to use the courts whereas the employee is bound by the grievance decision.

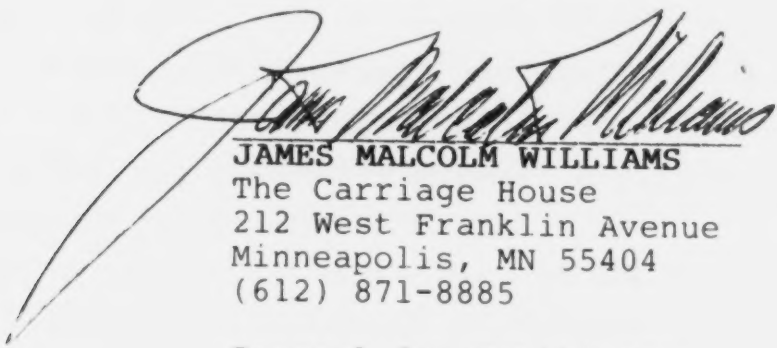
We are led to only one rational conclusion as a matter of legislative intent and constitutional right: that is that an **ERISA**-established plan's enforcement is covered by the **Employee**

Retirement Income Security Act of 1974. The **RLA** is simply not relevant. **ERISA** is modern social legislation which in no way modifies or conflicts with the **Railroad Labor Act.** Surely, when the **RLA** employer voluntarily sets up an **ERISA** plan to garner the obvious tax advantages, it subjects itself to the civil enforcement provisions of **ERISA.**

For these reasons, your Petitioner requestfully requests a Writ of Certiorari.

Dated this 10th day of January, 1992.

Respectfully submitted,



JAMES MALCOLM WILLIAMS
The Carriage House
212 West Franklin Avenue
Minneapolis, MN 55404
(612) 871-8885

Counsel for Petitioner
(Admitted May 29, 1961)

ORDER AND MEMORANDUM
HENNEPIN COUNTY DISTRICT COURT
FOURTH JUDICIAL DISTRICT
STATE OF MINNESOTA

(Title) D.C.File No. Ct 88-11459

The above entitled matter came on for hearing before the Honorable Henry W. McCarr, District COurt Judge, at C-1553 Government Center, Minneapolis, Minnesota on August 8, 1990, upon Defendants' motions to dismiss for lack of subject matter jurisdiction and in the alternative for summary judgment. Final papers were submitted August 30, 1990.

James Malcolm Williams, Esq., appeared for and on behalf of the Plaintiff. Kevin J. Johnson, Esq., appeared for and on behalf of the Defendants.

The Court having heard the arguments of counsel, and based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. Defendants' motion for dismissal for lack of subject matter jurisdiction is granted.

The attached Memorandum is incorporated herein by reference and made a part of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

/s/Henry W. McCarr
Henry W. McCarr
District COurt Judge

DATED: November 28, 1990.

MEMORANDUM

At issue in this case is whether Defendants Northwest Airlines, Inc. and Northwest Airlines Benefit Plan (Northwest) are liable for Plaintiff Spencer Evans' medical expenses for treatment of his wife.

Spencer is, and at all relevalt times was a participant in Northwest's Revised 1984 Medical Plan and the Revised Medical Plan of 1988. These plans are maintained in accordance with two collective bargaining agreements between Northwest and the International Brotherhood of Teamsters (IBT). Margaret Evans, the wife os Spencer Evans, is covered under both medical plans as a family member of Spencer Evans.

Margaret Evans was treated for mental illness at St. Mary's Hospital from January 23, 1986 to May 26, 1986, when she was discharged. On May 26, 1986 Mrs.

Evans was transferred to the Minnetonka Health Center, which is licensed as an intermediate care facility. Northwest also paid approximately $2,977.90 of Margaret Evans expenses from May to December 1989 as medical expenses under Class B charges under the Revised Plan.

The Plaintiff sued for approximately $45,000 for medical expenses incurred at the Minnetonka Health Center. Northwest has denied coverage for those expenses on two basis (sic). First, Evans did not appeal the denied claims under the procedure allegedly required by the Plan and the Revised Plan. Second, Northwest alleges the terms of the medical plans exclude coverage of Evans expenses because they were incurred at a long term health facility and not a hospital as required by the medical plans.

Northwest now moves for dismissal for lack of subject matter jurisdiction or alternatively summary judgment.

Page four of the 1984 Plan (the Plan) and page 75 of the 1988 Plan (the Revised Plan) state that they are both maintained pursuant to the collective bargaining agreement between Northwest and the IBT. The pertinent sections covering

grievances are covered by Section 22 of the 1984 collective bargaining agreement (the Agreement) and the 1988 revised bargaining agreement (Revised Agreement) between the IBT and Northwest. (Affidavit of Kevin Johnson, Ex. A and B.) Section 23 of the Agreement and the Revised Agreement establish a System Board of Adjustment to decide disputes pursuant to Section 204 of the Railway Labor Act (RLA). Id.; see 45 U.S.C. §1984. It is undisputed that Spencer Evans did not bring a grievance to dispute the denial of medical expenses for his wife.

Northwest maintains that the System Board of Adjustment established by the collective bargaining agreement pursuant to the RLA has exclusive jurisdiction over this disputed claim for medical expenses.

Spencer Evans asserts that this court has jurisdiction over this suit under the Employee Retirement Income Security Act (ERISA). 29 U.S.C. §§1001 et. seq. Spencer Evans cites Shaw v. Delta Air Lines, Inc., 463 U.S. 85, for the proposition that ERISA preempts the RLA and allows an employee subject to a

collective bargaining agreement to pursue his claim in state court rather than through a System Board of Adjustment established pursuant to the RLA.

Spencer Evans specifically points to ERISA Section 1132, which states in part that jurisdiction lies with:

> (e)(i). . .state courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a) (1) (5) of this section.

29 U.S.C. §1132.

However, ERISA also provides: "Nothing in this title shall be construed to alter, amend, modify, invalidate, impair or supersede any law of the United States . . . or any rule or regulation under any such law." 29 U.S.C. §1144(d).

The congressional jurisdictional intent in enacting ERISA is definite as expressed by the Senate Report which stated:

> The procedures provided by this section [Section 1132(c)] are provided as alternatives to existing procedures that may be available to plan participants or beneficiaries. Nor are these procedures intended to override the provision of anycollective bargaining agree-

ment or similar agreement which sets out procedures for employees in redressing their grievances.

S. Rep. No. 93-383, 93rd Cong., 2d Session, 5000 (1974).

Finally, Spence Evans' reliance on Shaw is misplaced. The Supreme Court in Shaw held that ERISA preempts certain provisions of the New York Human Rights Law. It does not support Evans argument that ERISA preempts the exclusive jurisdiction of a System Board of Adjustment established pursuant to the RLA.

It is clear that this Court lacks subject matter jurisdiction and this case is therefore dismissed. The court does not reach the merits of Defendants' motions for summary judgment.

/s/ H.W.M.
11/28/90

JUDGMENT/**JUDGMENT ROLL**
HENNEPIN COUNTY DISTRICT COURT
FOURTH JUDICIAL DISTRICT
STATE OF MINNESOTA

(Title) File No. 88-11459

This cause having been regularly placed upon the calendar of the above named Court, came on for hearing on the 8th day of August, 1990, upon motion of Defendants, and the Court, after hearing the arguments of counsel and being advised in the premises, did, on the 30th day of November, 1990, duly make and file its order granting said motion and for judgment herein.

Now, pursuant to said order and on motion of Kevin J. Johnson, Esq., Attorney for the Defendants,
IT IS HEREBY ADJUDGED:

1. That the Defendant' (sic) motion for dismissal for lack of subject matter jurisdiction be, and hereby is, granted.

2. That the Defendants have and recover of the Plaintiff the sum of

_____

Dollars, costs and disbursements as taxed and allowed herein.

3. That the Memorandum filed on the 30th day of November, 1990 be, and the

same hereby is, incorporated herein by reference and made a part hereof.

$

BY THE COURT
DISTRICT COURT ADMINISTRATOR

BY /s/J C Neunsinger
DEPUTY

Judgment on Motion
21-HC 2962(9/81)

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (1990).

STATE OF MINNESOTA

IN COURT OF APPEALS

C6-91-404

Hennepin County
DC File No. 8811459

Norton, Judge

Spencer R. Evans, individually and/as Guardian of Margaret E. Evans, Ward and Spouse,

James Malcolm Williams
212 West Franklin Avenue
Minneapolis, MN 55404

Appellant,

vs.

Northwest Airlines, Inc./Kevin J. Johnson et al.,

Department A1180
5101 Northwest Drive
St. Paul, MN 55111-3034

Respondents

Filed August 20, 1991
Office of Appellate Courts

Considered and decided by Crippen, Presiding Judge, Norton, Judge, and Short, Judge.

U N P U B L I S H E D O P I N I O N

NORTON, Judge

This is an appeal from a judgment of dismissal for lack of subject matter jurisdiction. We affirm.

FACTS

Appellant is employed by respondent, Northwest Airlines (NWA). Appellant is a member of the flight Attendants' union which has a collective bargaining agreement (CBA) with NWA. The CBA is governed by the Railway Labor Act (RLA). The CBA required NWA to provide medical benefits for appellant and his spouse and further defined what those benefits were. NWA also gave appellant separate handbooks that generally described benefits provided by its group medical insurance. The definitions of covered services in the CBA and handbooks were the same.

Appellant sough medical benefits for his wife's stay at a long-term care facility but payment was refused. Appellant filed a complaint in state district court seeking injunctive relief or a declaratory judgment to force NWA to pay for his wife's care. Respondents, NWA and NWA Benefit Plan, brought a motion for dismissal saying that the court lacked subject matter jurisdiction. The court granted respondents' motion and entered judgment of dismissal for lack of subject matter jurisdiction.

D E C I S I O N

Subject matter jurisdiction is a legal question and subject to de novo review. Leu v. Norfolk & Western Ry., 820 F. 2d 825, 827 (7th Cir. 1987). Dismissal for lack of subject matter jurisdiction is a dismissal without prejudice. 1 D. Herr & R. Haydock, Minnesota Practice § 12.5 (1985).

> [T]he RLA provides for mandatory administrative grievance procedures and remedies for "minor disputes" arising from the employment relationship between [an] * * * employee and the carrier. This federal administrative remedy is exclusive, and RLA preemption divests the state and federal courts of subject matter jurisdiction over "minor disputes."

Leu, 820 F. 2d at 827-28 (footnotes and citations omitted). A minor dispute is:

> one involving the interpretation or application of an existing collective bargaining agreement.* * *
>
> Minor disputes contemplate the existence of a collective agreement or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision

with reference to a specific situation or to an omitted case. Id. at 828 n. 7 (citation omitted). Whether or not Nwa had a duty to pay medical expenses was a minor dispute, and any state claims were preempted by the RLA. See id. at 830-32; See also Swanigan v. Western Airlines, 396 N.W. 2d 607, 610 (Minn. App. 1986), pet. for rev. denied (Minn. Jan. 21, 1987) ("[S]tate courts are without jurisdiction to review an action arising under the RLA"). The trial court correctly ruled that it lacked subject matter jurisdiction of this issue.

Appellant argues that the state court has jurisdiction under ERISA and alternatively under a separate common law contract claim. ERISA allows a participant under a covered plan to bring a civil action in state court to recover benefits. 29 U.S.C.A. §1132(a) (1) (B), (e) (1) (West 1985). However, ERISA does not supersede the RLA. See 29 U..S.C.A. § 1144(d) (West, 1985); see also De La Rosa Sanchez v. Eastern Airlines, 574 F. 2d 29, 33 (1st Cir. 1978).

Neither does appellant's common law contractclaim give the court jurisdiction. Appellant argues that a

separate contract was formed by the medical plan handbooks and, under the terms of the handbooks, he could sue in state court to enforce the plan. However, state claims that are "inextricably intertwined with the interpretation and application of the CBA" are governed by the RLA. Swanigan, 396 N.W. 2d at 611. Here, appellant's contract claim is based on the employer's duty to paymedical benefits and is intertwined with the interpretation of benefits under the CBA.

Alternatively, appellant makes several equitable arguments. He argues that respondents should have been estopped from raising the jurisdiction issue and that they waived RLA jurisdiction in their handbooks. Regardless of appellant's equitable arguments, a court must dismissan action "whenever it appears * * * that [it] lacks jurisdiction of the subject matter." Minn. R. Civ. P. 12.08 (c) (emphasis added); see also No Power Line, Inc. v. Minnesota Envtl. Quality Council, 262 N.W. 2d 312, 321 (Minn. 1977) (subject matter jurisdiction cannot be created by consent of parties).

Finally, appellant argues laches as a

reason to award attorney fees. Appellant did not move the trial court for an award of attorney fees; therefore, this issue is not appealable. See Minn. R. Civ. App. P. 103.03. Further, appellant's request for attorney fees on appeal is denied.

Affirmed.

/s/Fred C. Norton
8/13/91

STATE OF MINNESOTA
IN SUPREME COURT

PETITION FOR REVIEW
OF DECISION OF
COURT OF APPEALS
* * * * * * * * * * *

(Title) **APPELLATE COURT CASE NUMBER: C6-91-404**
DATE OF FILING COURT OF APPEALS DECISION: AUGUST 20, 1991

TO: The Supreme Court of the State of Minnesota:

The petitioner, Spencer R. Evans, requests Supreme Court review of the decision of the court of appeals herein upon the following grounds:

1. Statement of the Issues.

1. Did the Congress of the United States intend, when it enacted the Employee Retirement Income Security Act of 1974 (ERISA, **29 U.S.C.A. §1001, et seq.**; see, esp., **§1001** and **§1132**), to deprive employees who worked for employers covered by the 1926 Railroad Labor Act (**55 Stat. 577**, esp. **§153 (1) as amended, 1934**) of the procedural remedial benefits contained in ERISA by adding **29 U.S.C.A. §1144 (d)** providing that ERISA does not ". . . alter, amend, modify, invalidate, impair, or supersede any law

of the United States . . . " (where the **real** issue is the meaning of an ERISA medical/dental '**plan**', not of an RLA collective Bargaining agreement) ?

The court of appeals held in the affirmative so as to deprive Petitioner of his rights to bring an action in state or federal court and collect attorneys fees and expenses and thereby deprive him of his federal constitutional rights to equal protection of the law, to-wit: ERISA.

2. Does the election by a Railroad Labor Act employer to set up a medical benefit plan under ERISA and the hiring of an independent insurance company to administer that plan take the issue of the propriety of a denial of benefits to an employee out of the collective bargaining agreement and, consequently, out of the Railroad Labor Act, thereby granting the denied employee the procedural remedial rights under ERISA (where the **real** issue is the meaning of an ERISA medical/dental '**plan**', not of an RLA collective bargaining agreement) ?

The court of appeals held in the negative.

2. Criteria Relied on to Support

Petition.

This case is of great importance to the many hundreds of thousands of airline employees who have medical and dental benefits accorded them through their employment, in most instances on the basis of a "plan" administered by independent insurance companies totally outside the collective bargaining agreement and under ERISA. These airline unions are financially weak and suffer great disparity in attempting to diligently represent their members in the negotiation of the terms and conditions of their members' employment. These same unions certainly do not have the financial resources to perform insurance company adjusting and claim services on behalf of the wealthy Railroad Labor Act employers. Imagine the thousands of grievances based on medical and dental claims that would have to be filed with the unions if the court of appeals' interpretation of federal law is correct. Imagine, also, the extreme expense to the unions and the hundreds of additional union employees that would have to be hired so that the unions would, in effect, become satellite insurance

companies. The local unions would be investigating, evaluating and settling their own members' claims. There is no justification for placing this burden on the unions when one considers the tax advantages that the RLA employers receive under the Internal Revenue Code by having their employee benefit plans formed under ERISA of 1974.

It is an intellectual aberration to contend that on each single medical or dental claim that is denied, in whole or in part, the sole right of each individual under the plan is to force his or her union to go through an involved and costly grievance procedure, System Board of Adjustment procedure, formal arbitration procedures and appeals with ultimately the RLA company possessing the sole and exclusive right to appeal to the federal courts. This is a bureaucratic and financial disaster for the unions in the airline industry and a grossly unfair and chilling impediment to legitimate claims of the employees as well as a perversion of Congressional intent and purpose in the enactment of ERISA..

3. Statement of the Case and Facts.

This case was originally appealed

from a Judgment entered pursuant to an Order of the Hon. Harry W. McCarr of the Fourth Judicial District, Hennepin County, dismissing the case, ". . . for lack of subject matter jurisdiction . . .". The case involves the respondents' denial of a claim for medical benefits made by the Petitioner and his ward/spouse. See Appellant's Brief Appendix, Pp. 36-41.

The court of appeals ignored the tacit agreement between the employer and all of its employees that a denial of a medical/ dental claim would only involve an interpretation of the ERISA plan (**NOT OF THE COLLECTIVE BARGAINING AGREEMENT**). The employer made unequivocal statements in the Group Plan Booklet prepared by it and circulated to all employees including Petitioner:

> "**IF YOU HAVE A CLAIM FOR BENEFITS THAT IS DENIED OR IGNORED, IN WHOLE OR IN PART, YOU MAY FILE SUIT IN A STATE OR FEDERAL COURT.**" (Emphasis, ours.) See Appellant's Brief Appendix, Pp. 25-29.

Statements to substantially the same effect were made by respondents' insuror

agent Connecticut General Life Insurance Company, now CIGNA. See App. Br. App., Pp. 46-57.

When that insurance company denied the medical claim on behalf of respondents, it informed the Petitioner that he could have that decision reviewed in accordance with ". . . procedures provided by the Employee Retirement Income Security Act of 1974." Section 1132 of that Act provides, among other things, that the petitioner may bring a civil action in state courts of competent jurisdiction to ". . . recover benefits due . . . under the terms of his **plan**, to enforce his rights under the terms of the **plan**, or to clarify his right to future benefits under the terms of the **plan** . . . " (Emphasis, ours.) App. Br. App., Pp. 32-33.

The trial court and the court of appeals held that the Petitioner has no enforcement rights of any nature under ERISA or state law (no matter how he and his attorney were misled by the respondents) and, because the time requirements to bring a grievance had expired, there were no rights whatsoever to redress the improper denial of medical

benefits. App. Br. App. P. 70.

The effect of these rulings is to unjustly deprive the Petitioner and his spouse of approximately $50,000 in medical benefits after they had incurred substantial attorneys fees and costs in reliance on the respondents' representations. App. Br. App. Pp. 67 and 73.

4. Argument in Support of Petition.

It is a standard rule of legislative interpretation that a statute must be interpreted, if reasonably possible, to be constitutional. Once an airline has chosen to set up a group benefit plan for its employees, that plan and the rights and remedies of the employees under that plan are covered by the Federal Employee Retirement Income Security Act of 1974 (ERISA). The facts of this case clearly establish that both the union and the respondents' management, including their attorneys prior to this case, agree that the medical benefit plan is a document and contract totally separate and apart from the collective bargain- ing agreement. The court of appeals ignored the fact that the collective bargaining agreement merely reflects the general

agreement of the parties to provide medical benefits. It is the group health plan set up under ERISA that controls and protects the rights and benefits of the employee and the procedure to enforce those benefits. See App. Br. App. Pp. 25-35 and 68.

We are led to only one rational conclusion as a matter of legislative intent, constitutional right and an ERISA-established plan that the civil enforcement provisions of the Employee Retirement Income Security Act of 1974 control. The 1926 pro-employer Railroad Labor Act is simply not relevant. ERISA is modern social legislation which in no way modifies or conflicts with the Railroad Labor Act. It is only when the Railroad Labor Act employer voluntarily sets up an ERISA plan that it subjects itself to the civil enforcement provisions of ERISA.

For these reasons your Peitioner seeks an Order granting review of the decision of the Court of Appeals dated August 20, 1991.

Dated this 18th day of September, 1991.

/s/James Malcolm Williams
JAMES MALCOLM WILLIAMS
MN Atty. Reg. No. 117407
Attorney for Petitioner
212 West Franklin Avenue
Minneapolis, MN 55404
Telephone: (612) 871-8885

STATE OF MINNESOTA

IN SUPREME COURT

C6-91-404

Spencer R. Evans, Individually and as Guardian of Margaret E. Evans, Ward and Spouse,

Appellant,

vs.

Northwest Airlines, Inc., et al.,

Respondents.

O R D E R

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Spencer R. Evans for further review be, and the same is, denied.

Dated: Oct. 16, 1991

BY THE COURT:

/s/ A.M.Keith

Chief Justice